IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. HUMBERTO DE LA OSSA MORENO, Appellant.	)	2 CA-CR 2006-0199 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20020139

Honorable Hector E. Campoy, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
By Randall M. Howe, Joseph T. Maziarz,
and Alane M. Roby, a student certified pursuant
to Rule 38, Ariz. R. Sup. Ct., 17A A.R.S.

Phoenix
Attorneys for Appellee

Isabel G. Garcia, Pima County Legal Defender
By Alex Heveri

Tucson
Attorneys for Appellant

E C K E R S T R O M, Presiding Judge.

¶1 Humberto De La Ossa Moreno was not present when a jury found him guilty in 2002 of aggravated driving under the influence of an intoxicant while his license was suspended, revoked, or in violation of a restriction and aggravated driving with an alcohol concentration of .10 or more while his license was suspended, revoked, or in violation of a restriction. After Moreno was apprehended several years later, the court found he had two prior historical felony convictions and sentenced him to slightly mitigated, nine-year prison terms to be served concurrently. Moreno appeals his sentence.

¶2 Citing *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354 (2004), Moreno contends his rights under the Confrontation Clause of the Sixth Amendment to the United States Constitution were violated because the trial court relied on certified copies of public records to find he had been convicted of the two felonies, without receiving testimony about the contents of the records. Moreno also argues the court erred by considering the records even though the "state [had] failed to properly admit [them]."[1] Finding no error, we affirm.

¶3 We recently addressed—and rejected—Moreno's Confrontation Clause argument in *State v. King*, 213 Ariz. 632, ¶ 27, 146 P.3d 1274, 1280 (App. 2006), in which we held that documentary evidence of prior convictions and the Arizona Department of Transportation Motor Vehicle Division (MVD) records is not testimonial and therefore does

[1]Moreno raised this second argument by motion below, in which he first objected to admission of the documents based on *Crawford*. As discussed, the trial court correctly overruled those objections.

not implicate the Confrontation Clause. Our reasoning in *King* applies with equal force here and need not be repeated.

¶4 Moreno's argument that the documentary evidence was not properly admitted is also without merit. At sentencing, the state presented three exhibits: certified copies of prior conviction records from the Pima County Superior Court (Exhibit 1); certified copies of MVD records (Exhibit 2); and copies of records from the Arizona Department of Corrections, certified as true and correct by their custodian (Exhibit 3). Although the state never moved for admission of the documents at sentencing, the judge stated on the record that he had "reviewed the exhibits identified *and admitted* as Exhibits 1, 2, and 3" and made clear that he had relied on Exhibits 1 and 2 in finding that "identification, the commission of the prior offenses, the fact they were felonies and the fact that the defendant was convicted of these crimes, ha[d] been proven." (Emphasis added.) Moreno did not object, at any time during the sentencing hearing, to the court's alleged failure to admit these exhibits.[2]

[2]Moreno did object to the admission of Exhibit 3 on the ground of late disclosure, and Exhibit 3 was admitted over his objection. Moreno also argued that the MVD records had not been admitted *at trial*, and so, he maintained, "there is an insufficient record to tie that trial to this individual on the identification issue." The record does not support, however, Moreno's assertion that he had "objected at the priors trial because the exhibits had not been admitted."

¶5 After the sentencing minute entry failed to reflect the admission of the exhibits, Moreno filed a "motion to preclude admission of evidence/motion to dismiss priors." At a hearing on that motion, the court explained the admission of the exhibits as follows:

> [Based on a] minute entry from the May 9th hearing, I think I found that the exhibits are allowed. And what I meant was, they should have been admitted at that point in time. So for the sake of clarification, Exhibits 1, 2 and 3 are allowed over the objection of . . . the defense. And they *are and were* admitted into evidence. And that is of course, the basis upon which I found that the allegations of prior convictions had been proven true.

(Emphasis added.) Upon review of the transcripts, we conclude that these comments by the court simply clarified what had actually occurred at the sentencing hearing: the state's exhibits had been admitted.

¶6 Because the court's admission of the exhibits might have been clarified at the sentencing hearing if a timely objection had been raised, Moreno has forfeited any appellate review of this issue unless he can establish fundamental error that affected the sentence he received. *See State v. Henderson*, 210 Ariz. 561, ¶¶ 19-20, 22, 115 P.3d 601, 607-08 (2005). Moreno has not suggested such prejudice, and we find no error, much less fundamental error. Accordingly, we affirm Moreno's convictions and sentences.

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PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

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J. WILLIAM BRAMMER, JR., Judge

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PHILIP G. ESPINOSA, Judge